IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 4071 of 2007()

AGAINST THE ORDER DATED / / IN CC. 624 /2002 IN LP.39/2004 of J.M.F.C.,RANNI
CRIME NO.5/98 OF PERUNAD POLICE STATION

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PETITIONER/ACCUSED NO.2:

SALIMKUMAR S.S., AGED 36 YEARS,
S/O. SADANANDAN P.K., KANNATTUTHARAYIL,
MADMON MURI,PERUNAD VILLAGE.

BY ADV. SRI.V.SETHUNATH

RESPONDENTS: COMPLAINANT & STATE:

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1. C.I. OF POLICE,
OFFICE OF THE C.I., VADASSERIKKARA.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 4071 OF 2007

Dated this the 5th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution, inter alia, under Sec.379 of the IPC. Investigation is over. Final report has been filed. Cognizance has been taken. Consequent to the non-appearance of the petitioner, the case against the petitioner has been transferred to the list of Long Pending Cases. The petitioner now wants to surrender before the learned Magistrate. He apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He prays that directions may be issued under Sec.438 and/or 482 of the Cr.P.C.

2. After the decision in **Bharat Chaudhary and**

another v. State of Bihar (AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

3. I find no reason to invoke the powers under Sec.482 of the Cr.P.C. also. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge